



December 20, 2018

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: 8YY Access Charge Reform, WC Docket 18-156

Dear Ms. Dortch:

On behalf of the Ad Hoc Telecom Users Committee (“Ad Hoc” or “Committee”), the undersigned and Susan M. Gately of SMGately Consulting, LLC met on December 18 with Nirali Patel, Wireline Advisor to Chairman Pai.

In addition to the issues and analysis in the attachment, we discussed the Commission’s long-standing rejection of implicit subsidies as an economically inefficient means of pricing network services. Implicit subsidies occur when providers inflate the price of one product in order to offset reductions in the price of another product. The resulting distortion of marketplace pricing signals produces uneconomic resource allocations and creates barriers to the development of competition.

The Commission implemented the current universal service fund mechanism in order to replace implicit universal service subsidies in the access charge regime with explicit subsidies that could be targeted effectively and without distorting the price of access services generally.¹ For the same reason, in its 2011 *Transformation Order*,² “the Commission adopted a national, default bill-and-keep framework as the ultimate end state of all telecommunications traffic exchanged with a LEC.”³

¹ *Tex. Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313, 318 (5th Cir. 2001) (“The 1996 Act thus required that the implicit subsidy system of rate manipulation be replaced with explicit subsidies for universal service.”).

² *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, *pets. for review denied sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

³ *8YY Access Charge Reform*, Further Notice of Proposed Rulemaking, 33 FCC Rcd 5723 (2018) (“FNPRM”) at para. 13.



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The legitimacy of bill-and-keep as the appropriate pricing mechanism for access traffic has not been the subject of serious debate for quite some time. It is economically rational, cost-based, in keeping with Commission policy, and will put an immediate stop to the traffic pumping problem that is plaguing 8YY service. Opponents of bill-and-keep for originating 8YY access charges nevertheless claim that they will be harmed by adoption of bill-and-keep. And yet, despite multiple opportunities over many years to provide evidence to support their concerns, opponents have utterly failed to present any evidence that such harm will occur – no data whatsoever regarding the magnitude of originating 8YY access minutes, the costs associated with providing those minutes, the revenue that would be lost, or the impact, if any, on their profit margins.

Despite this fundamental evidentiary failure, opponents of 8YY access charge reform nevertheless argue for a transition period or new offsetting charges for end users. These same parties have been on notice that the Commission would move 8YY originating access to bill-and-keep since the Commission issued its original FNPRM as part of the 2011 *Transformation Order* and then reiterated it in the *FNPRM* for the instant docket in 2018. Delaying reform would penalize the toll free subscribers who have already been forced to pay inflated charges for the past seven years, simply because some providers are either engaged in traffic pumping or utterly failed to plan for this change since the Commission proposed it seven years ago.

As the parties that are harmed the most by perpetuation of the existing access charge rate structure, 8YY toll free customers like Ad Hoc's members deserve to be better protected by the Commission from the ongoing economic distortions and even fraudulent behavior revealed in the record of this proceeding.

Sincerely,

A handwritten signature in cursive script that reads "Colleen Boothby". The ink is dark and the signature is fluid.

Colleen Boothby
Counsel
Ad Hoc Telecom Users Committee

cc: Nirali Patel



Ad Hoc Telecom Users Committee
8YY Access Charge Reform (WCB Docket No. 18-156)

- The record confirms that “bill-and-keep” remains the correct economic policy for access charges, including 8YY
 - No party provided a persuasive challenge to the FCC’s fundamental commitment to “bill-and-keep”
 - No party could demonstrate that originating 8YY is subject to price-disciplining competition
 - Per minute access charges for originating 8YY are still a virtually irresistible incentive to engage in traffic pumping
- The FCC should therefore adopt the proposal in its FNPRM and resume the 21-year old practice of treating the originating end of an 8YY call the same as the terminating end of a sent-paid call
- The three-year transition to “bill-and-keep” requested by the carriers is unjustified and patently unnecessary
 - Carriers have been on notice for eight years that inflated toll free access charges are inconsistent with the Commission’s shift to “bill-and-keep”
 - The Commission’s reliance on “bill-and-keep” has not changed or been undermined since then
 - Yet the carriers’ 8YY access charges have remained unreasonably high
 - The Commission has already found that access should be priced at zero in a “bill and keep” regime
 - But tariffed access rates for originating 8YY are far above zero or any measure of cost, e.g., South Dakota’s intrastate access charge exceeds 10¢ per minute
 - There are no network cost differences between terminating and originating access that would justify treating originating toll free differently from terminating sent-paid
 - ILECs have made broad, non-specific claims of economic harm but have never supported their claims with actual data
 - No cost data
 - No usage data (neither calls nor minutes)
 - No revenue data
 - Carrier claims of declining 8YY access revenues are red herrings
 - Carriers who lose customers to other carriers or technologies can lose revenues whether or not their remaining customers are making more 8YY calls
 - Even customers who remain with a traditional wireline carrier may shift their 8YY calling to their wireless phones, which reduces a wireline carrier’s access revenues
- The Commission should act in time for the 2019 access filing